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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA COURIER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Excel Telecommunications, Inc. *Ex Parte* Presentation Concerning Issues Pertaining to CC Docket No. 92-237 Phases One and Two

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206 (1996), on behalf of Excel Telecommunications, Inc. ("Excel"), an original and one copy of this letter is submitted to advise the Commission that a meeting was held on July 9, 1996 between representatives of Excel and members of the Network Services Division staff of the Commission's Common Carrier Bureau to discuss issues related to the Commission's current policy on assigning carrier identification codes. The attached handout, which outlines the specific issues discussed, was distributed at the meeting.

In attendance at the meeting were the following members of the Network Services Division staff: Mary De Luca, Senior Engineer, Elizabeth Nightingale, Attorney, Renee Alexante, Attorney, David O. Ward, Senior Legal Assistant, and Octavia Florence, Intern; Ron McClenan, Director, LEC Services, Excel Telecommunications, Inc.; and Julia A. Waysdorf and Pamela S. Arluk, Attorneys, Swidler & Berlin, Chtd.

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Any questions regarding this notice should be addressed to the undersigned.

Very truly yours,

Pamela S. Arluk

cc (w/o enclosure): Mary De Luca (via Courier)
Elizabeth Nightingale (via Courier)
Renee Alexante (via Courier)
David O. Ward (via Courier)
Octavia Florence (via Courier)
Ron McClenan
Andrew D. Lipman, Esq.

SWIDLER
&
BERLIN
CHARTERED

MEMORANDUM

TO: Mary DeLuca
Common Carrier Bureau
Federal Communications Commission

FROM: Julia A. Waysdorf
Pamela S. Arluk

DATE: July 9, 1996

RE: Excel Telecommunications, Inc.

Thank you for the opportunity to meet with us and representatives of Excel Telecommunications, Inc. ("Excel") concerning Carrier Identification Code ("CIC") assignment issues. Attached is a brief outline of the issues of immediate concern to Excel, an interexchange resale carrier. We would be happy to provide you with further details on any of these issues, at your request.

Should you have any questions, please feel free to contact either of us, or Ron McClenan or Dan Martignon at Excel. Mr. McClenan can be reached directly at (214) 863-8304, and Mr. Martignon can be reached at (214) 863-8350.

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EXCEL TELECOMMUNICATIONS, INC.

REQUEST FOR APPLICATION OF THE FCC'S POLICIES TO PERMIT THE ASSIGNMENT OF A SECOND CIC CODE

Excel Telecommunications Inc. ("Excel") appreciates the opportunity to meet with you to discuss the adverse impact on Excel of the Federal Communications Commission's ("FCC" or "Commission") current policy of instructing BellCore to limit new Carrier Identification Code ("CIC") assignments to one CIC per entity, including subsidiaries and affiliates. The following provides a brief outline of the hardships being caused by the FCC's policy and demonstrates why a flexible application of that policy, which would allow Excel to be assigned a second CIC, would promote the goals underlying the Commission's policies and further the public interest.

I. Why Excel Needs a Second CIC

- Excel is in desperate need of a second CIC because of its rapid growth and the manner in which it provides service.

- Excel resells long distance service through other facilities based carriers. In 1990, Excel entered into an agreement with Allnet Communications (now merged as Frontier) to serve as Excel's underlying carrier. Initially, Allnet/Frontier provided all of the network facilities used to transmit Excel's traffic, and Excel's customers were "PIC'ed" onto the Allnet/Frontier CIC (444).

- As Excel's customer base has grown over the past few years, its customers have demanded that Excel have more visibility. Accordingly, Excel applied for and received a CIC (752). Over the last few years, Excel has "sub-CIC'ed" its 752 to Allnet/Frontier Feature Group D facilities and has established the Excel name in all Local Exchange Business Offices. Excel has expended millions of dollars to convert existing customers to the 752 PIC in order to acquire the flexibility to utilize other networks in providing its services.

- With continued growth (in excess of 250% for 1994 and 1995), Excel has found that it must diversify its underlying carriers. The use of more than one underlying carrier has become a necessity, so that Excel will have access to sufficient transmission and switching facilities to enable it to maintain high levels of service. The use of more than one underlying carrier also provides Excel with the ability to negotiate the best price point in order to stay competitive with the "Big Four" long distance carriers--AT&T, MCI, Sprint and LDDS/WorldCom.

- Over recent months, therefore, Excel has negotiated agreements with a number of other facilities-based carriers to transmit portions of Excel's traffic. However, because Excel only has one CIC, Excel's ability to distribute its traffic between its different underlying carriers is severely limited.

- With only one CIC, Excel must divide traffic between carriers by LATA. This means that all of Excel's traffic in a particular LATA must go through the same underlying carrier, even if one carrier does not have sufficient capacity to carry all of Excel's traffic in that LATA. Therefore, Excel's ability to provide high quality service is adversely affected, as is its ability to route its traffic through alternate carriers in order to offer the widest variety of network features. Additionally, because its underlying carriers are aware of the technical limitations of the routing of Excel's traffic due to the CIC code factor, Excel loses negotiating power in getting the best rates for its customers.

- All of these factors serve to harm the ability of Excel to compete effectively in a market where many carriers have more than one CIC.

- Excel has attempted to receive an assignment of an additional CIC code from BellCore. However, because of the FCC's current policy, its requests have been denied.

II. The Commission's Moratorium On Assigning CICs

- Until 1989, carriers were permitted to be assigned three CICs--one primary CIC and two supplemental CICs. Although there are approximately 970 combinations of three digits that can be used as CICs, by the late 1980s, more than 70 percent of those codes had been assigned. Industry representatives, therefore, developed a plan to replace three digit CICs with four digit CICs. Because the industry could not reach consensus on the length of the transition period (during which both three digit and four digit codes can be used), it asked the Commission to intervene. In response, in the fall of 1992, the Commission began proceedings to request comment on how the transition from three digit to four digit CICs should proceed. In addition, in 1989, the industry began a conservation policy, only allowing carriers to be assigned one rather than three CICs.

- Although the industry has begun to assign four digit CICs, the FCC in 1995 nevertheless directed the Administrator of the North American Numbering Plan ("NANP") to continue to limit assignments to one CIC per applicant. Under this conservation policy, carriers who already have one CIC can not be assigned another, except specifically for the purpose of being able to compete in the presubscription process in any state that mandates intraLATA presubscription after January 1, 1996.

- Notwithstanding this conservation policy, many interexchange carriers, through the industry's prior policy, acquisitions and other methods possess many more than three CICs. As the Commission is no doubt aware, companies may acquire additional CICs through the merger or acquisition of other entities that previously have been assigned a CIC. Therefore, as applied by BellCore, the Commission's "one CIC" policy is not a limitation on the total number of CICs that one entity can hold, but rather is a limitation only on the ability of an entity to be assigned more than one CIC at this time.

- The inequities of BellCore's present application of the Commission's policy are readily apparent. According to Commission records, MCI Telecommunications Corporation has 23 CICs and World Com, Inc. d/b/a/ LDDS WorldCom has 43 CICs. These are just two examples of the many entities that hold more than one CIC at this time.

III. The Commission Should Flexibly Apply Its Assignment Limit And Allow Excel to be Assigned a Second CIC

- Excel is currently one of the most rapidly growing new entrants to the market. As documented in its registration statement for an initial public offering recently filed with the US Securities and Exchange Commission, Excel's customer base has grown over 250% in 1994 and 1995. Since Excel is directly competing with the biggest long distance carriers, it is imperative that it be able to keep its prices as low as possible and continue to expand its service offerings. These factors are becoming even more urgent with the entry of the Regional Bell Operating Companies ("RBOCs") into the interLATA long distance market.

- At present, the Commission will allow an exception to its current "one CIC" assignment policy only for CICs to be assigned for intraLATA presubscription use. However, the policy underlying this current exception is equally applicable to Excel's request for the assignment of a second CIC.

- The Commission recognized when outlining this exception that "[i]n order to compete on equal terms with other entities, some carriers . . . require a separate CIC to route and bill their presubscribed intraLATA customer traffic." This statement serves as recognition by the Commission that the limitation of one CIC per entity can severely limit the ability of a carrier to route increasing amounts of traffic in the most efficient manner possible and in order to meet the requests of customers for presubscribed service from that carrier.

- Like some carriers' need for an additional CIC to compete in providing intraLATA service, Excel similarly needs an additional CIC for routing and billing purposes in order to meet the requests of customers for presubscribed service and therefore "compete on equal terms with other entities." The only difference between Excel's situation and that of a carrier requesting an additional CIC assignment for intraLATA presubscription is that Excel will use the second CIC to route both interLATA *and* intraLATA traffic. Currently, Excel's customer traffic is sufficiently high that having a single CIC severely diminishes its ability to effectively compete.

- Excel fully intends to participate in the intraLATA presubscription process when such opportunities arise. Therefore, a second CIC will be used for intraLATA presubscription purposes consistent with the FCC's policies. However, because of an *immediate* need for Excel to use a second CIC to route its existing traffic, both intraLATA and interLATA, Excel is requesting a CIC for both purposes.

- Because a second CIC will be used by Excel only for routing of presubscribed customer traffic (and not for "dial-around" or other purposes), in essence the CIC would be used for presubscription purposes, *i.e.*, to effectuate and make possible the choice of Excel's customers' to have Excel be the carrier which will handle and bill its calls.

- Excel is unaware if BellCore has, to date, assigned a second CIC to any entity purely for intraLATA presubscription purposes, and if so, whether such CIC is in fact being used exclusively for such purpose. However, given the limited applicability of intraLATA presubscription on a nationwide basis at this time, Excel doubts that, even if any second CIC has been so assigned, that it is being efficiently used.

- Apparantly the Commission recognizes that underutilization of the CICs assigned exclusively for intraLATA presubscription purposes will occur, because, as set forth in the FCC's October 25, 1995 letter to Ron Conners, Director of NANP Administration, CICs should be assigned to "carriers that might participate in state intraLATA presubscription mandates after January 1, 1996, regardless of when a state actually orders presubscription." As the Commission is aware, under Section 271(e)(2) of the Telecommunications Act of 1996, except for single-LATA states and states that have issued an order by December 19, 1995 requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell opearing company has been granted authority to provide "in-region" long distance services in that state, or before 3 years after the date of enactment of the Telecommunications Act, whichever is greater.

- Such an inefficient use of what the FCC considers to be a scarce resource hardly seems to be in the public interest, given the legitimate *immediate* need of Excel for a second CIC assignment. In contrast to such underutilization, a second CIC assignment to Excel would *immediately* be used to route customer traffic of Excel's presubscribed customers.

- The Commission therefore should apply its policy in a manner that would permit the assignment of an additional CIC to Excel, based on Excel's volume of traffic and its possession of only one CIC (unlike the other larger long distance carriers, all of whom possess many more than one CIC code). Not only would assigning Excel an additional CIC promote competition, but denying Excel's request would inhibit competition in the current market. There are few new entrants that are competing as effectively as Excel in today's market. Denying Excel's request would restrict a growing carrier's ability to offer the necessary services and rates to remain competitive.

- In a similar manner to the procedure established by the Commission for assignment of a second CIC for intraLATA presubscription purposes, Excel would be happy to certify to the Commission and to BellCore that for technical reasons and pursuant to its contracts with its underlying carriers, it is unable to use the CIC presently assigned to it for purposes of routing its presubscribed customer traffic to different underlying carriers in the same LATA, and that therefore a second CIC assignment is required for this purpose at this time, as well as for intraLATA presubscription purposes when available.

- Excel also would be happy to supply the FCC and BellCore with periodic reports demonstrating the manner in which the second CIC is being utilized.

IV. The Commission's One-CIC-Per-Carrier Policy is Anticompetitive and Should Be Abolished

- The FCC's policy of only granting new applicants one CIC plainly inhibits competition because it constrains new entrants, such as Excel, from effectively routing their traffic and from negotiating rates to compete against the "Big Four" long distance carriers.

- New market entrants did not have the ability to obtain the same number of CICs as carriers who were providing service before the conservation policy went into effect. With only one CIC these newer carriers are forced to divide their traffic by LATA or Tandem.

- Since earlier entrants to the market were able to receive three CICs, they lack the problems faced by Excel and other new market entrants. This discrepancy in CIC assignments constitutes discrimination against new entrants because of the access that incumbent carriers have to these extremely valuable resources. Access to CICs allow carriers to charge cheaper rates and provide a greater variety of services. If the Commission fails to lift its moratorium, new entrants will become increasingly unable to compete with the larger incumbent carriers.

- In addition, the moratorium on CIC assignment has limited the services that all interexchange carriers can provide their customers, even the incumbents. For example, in the Commission's recent rulemaking proceeding, AT&T argued that the Commission's policy on CICs should be altered because there are many services that it is unable to provide without an additional CIC. Accordingly, the Commission's policy has also limited the number of new services available to customers from both new carriers and incumbents.

- The introduction of long distance services provided by the RBOCs is likely to exacerbate the anticompetitive aspects of the "one CIC' assignment policy as applied by BellCore. As currently applied by BellCore, entities are prohibited from being assigned an additional CIC, even if a wholly-owned subsidiary or affiliate of that entity is requesting the use of a second CIC for new services. It will be interesting to see how BellCore (whose members are the RBOCs) will apply this policy to requests by the RBOCs themselves for additional CIC to be used by the RBOCs' own new long distance subsidiaries. The anticompetitive impact of BellCore applying the FCC's policy differently to its own members as to other carrier entities is obvious.

- Finally, the objectives of the Telecommunications Act of 1996 require the Commission to abolish the limitation. The 1996 Act directs the Commission "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." The Commission's limit on assigning CICs is incompatible with these mandates because it poses a barrier to entry. New entrants clearly cannot provide the same number and quality of services as carriers such as MCI and LDDS WorldCom who have many more CICs than the current policy allows.

V. The Conservation Policy is No Longer Necessary

- With the release of the first 2000 four digit codes in the 5000 to 6000 range for assignment, the number of CICs available for assignment no longer requires the conservation policy. According to recent NANPA data, as of April 1, 1996, only 306 four digit codes out of the 2000 currently available codes have been assigned, with an assignment rate remaining constant at 16 codes a month. Even if the assignment rate increases to 20 per month, these codes will last another eight years.

- The Commission therefore at this point should allow BellCore to assign an additional CIC to carriers who make a substantial showing that an extra CIC will promote competition. Because there are a number of CICs available, the Commission should be able to lift its policy in deserving situations without posing a threat of exhaustion of the CICs. If the CIC assignment rate increases so dramatically as to threaten exhaustion, the FCC can issue additional relief codes that are not in the 5000 or 6000 ranges to increase the supply of available codes.

- The FCC, however, should not allow a conservation policy based on contrived resources to limit competition in the industry. At this time, the FCC does have adequate CIC resources to assign additional CICs to carriers who need those CICs to effectively compete in today's competitive environment.

VI. The Industry Unanimously Supports Lifting the Moratorium

- On April 30, 1996, the Commission released a Public Notice requesting comment on the Commission's current policy regarding assignment of CICs. The commenters responding to that notice, representing all segments of the industry, unanimously support lifting the current moratorium on CIC assignment. The industry is in agreement that there are sufficient CICs available to satisfy the industry and that assigning additional CICs to new market entrants is essential for competition.

- The instant request by Excel is a dramatic illustration of the adverse impact of the Commission's policy on a carrier that legitimately requires an additional CIC in order to route its traffic to its presubscribed customers in the most efficient manner possible to meet the growing needs of its subscribers. The Commission should be flexible enough in its application of its policies to alleviate this artificial barrier to effective competition in the long distance industry.

Dated: July 9, 1996